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12 Productions, LLC and Ryan A. Brooks

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 GOLD GLOVE PRODUCTIONS,
18 LLC, a California Limited Liability
19 Company and RYAN A. BROOKS, an
20 individual,

21 Plaintiffs,

22 v.

23 DON HANDFIELD, an individual,
24 TRESSA DIFIGLIA HANDFIELD, an
25 individual, RANDY BROWN, an
26 individual, MICHELE WEISLER, an
27 individual, CHARLES FERRARO, an
individual, JAY COHEN, an individual,
ROBERT LORENZ, an individual,
UNITED TALENT AGENCY, INC., a
California corporation, THE GERSH
AGENCY, a California corporation,
WARNER BROS. PICTURES INC., a
Delaware corporation, MALPASO
PRODUCTIONS, LTD., a California
corporation, WARNER BROS.
DISTRIBUTING INC., a Delaware
corporation, WARNER BROS. HOME
ENTERTAINMENT INC., a Delaware
corporation, WARNER BROS.
DOMESTIC TELEVISION
DISTRIBUTION INC., a Delaware
corporation, TW UK HOLDINGS INC.,
a Delaware corporation, and DOES 1-
10, inclusive

28 Case No. CV13-07247-DSF (RZx)

29
30 **PLAINTIFFS' REPLY TO UTA**
31 **DEFENDANTS' OPPOSITION TO**
32 **PLAINTIFFS' MOTION TO**
33 **STRIKE DEFENDANTS'**
34 **SUPPORTING DECLARATIONS**

35
36 FILED HEREWITH: DECLARATION
37 OF GERARD FOX

38 The Hon. Dale S. Fischer

39 DATE: March 3, 2014
40 TIME: 1:30 p.m.
41 COURTROOM: 840

1 Defendants.
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I. Summary of Argument

Plaintiffs' counsel made defense counsel aware of its objections to the declarations at issue. The objections stated are precise, unlike the opposition brief which is full of rhetoric but short on a discussion of the rules of evidence. As noted in the objections, the declarations are full of rank hearsay and speculation and none authenticate the scripts, which are themselves a hornets' nest of mostly undated, copies from over a quarter century or so ago.

II. Plaintiffs' Objections to the Defense Declarations Follow Proper Form

Plaintiffs and defense counsel have communicated in emails, and carefully since defense counsel started sending such emails to the press. After one such exchange, a call was received by Defendants' counsel from a New York Times writer. *See* Exhibit T to Declaration of Gerard Fox ("Fox Decl."). That said, Plaintiffs' counsel has made clear that the declarations are inadmissible. *See* Exhibit U to Fox Decl.

Plaintiffs objections are specific because they need be under the law, and call out the hearsay and hearsay within hearsay throughout these declarations. The form of an evidentiary objection must be specific, and these are. Fed. R. Civ. P. 56(c), *Allen v. Scribner*, 812 F.2d 426, 435 n.18 (9th Cir.), *amended*, 828 F.2d 1445 (9th Cir. 1987).

III. Declarants Do Not Properly Authenticate any Script; Nor Can They

Randy Brown attaches scripts, each undated, lettered by someone as A-J. DN 54-1. He could not in his deposition state whether A was the first in order. DN 146 at 116-119. He testified these came off of floppy discs. But while he provides ten, there are actually at least seventeen and these come off of questioned floppy discs, that have serious admissibility issues attached setting aside defense counsel's misleading and baseless objections to forensic reports. Since the undated scripts offered by Mr. Brown do not match in number those undated ones on the questioned floppy discs, no one can and has properly authenticated any.

1 Mr. Cooper, Mr. Brown's expert has tried to date a select few, but he did not
 2 write or create any of these, and why -- the Court might ask -- is a forensic expert
 3 providing the dates of creation and not Mr. Brown himself?

4 Mr. Brown stated that the September 1997 script included his friend's Dan's
 5 and Pat's notes and it is indicated by Bill Sheinberg, in his declaration, that this
 6 September 1997 draft was given to Ms. Gadsby. DN 56 at 4-5. This is impossible as
 7 the floppy disc folders and files evidence the Dan and Pat notes versions were
 8 supposedly created after Ms. Gadsby received what is called both the September
 9 1997 script and Exhibit A to the Sheinberg declaration. DN 130 at 11. Also, the
 10 September 1997 script has no specific date, it's just dated "September," making it
 11 impossible to match with anything given anyone that month. Most importantly,
 12 Mr. Brown testified in detail in his declaration that the September 1997 draft that
 13 was the first given to Mr. Sheinberg included the Rosenblatt's scene that is very
 14 much in contention as to the source of creation. When one reads Mr. Sheinberg's
 15 declaration and looks to the September 1997 script (Exhibit A to that declaration),
 16 DN 56-1 at 15, that is supposed to have that scene if all the declarations are truthful:
 17 it's not there. This makes it impossible to determine what script, if any, was given
 18 to Ms. Gadsby or read by Mr. Sheinberg, and calls all the declarations into
 19 question.

20 The Bubble Factory and Cosmic Entertainment scripts are not in original
 21 form, include no handwritten notations, cannot be matched with the floppy disc
 22 versions with any certainty, and have scenes in them that could not have been
 23 written at the times associated with each. *See* Exhibit V to Fox Decl.; DN 56-1 at
 24 15, DN 130 at 11; DN 66-4; DN 66-5.

25 None of these scripts were registered anywhere, even by attorney Marcy
 26 Morris, a dear friend to Neal Landau, who would be liable for not registering a
 27 script her client was optioning, and passing around town.

1 Ms. Gadsby claims she did coverage on a script but if you read her
 2 declaration closely, it does not authenticate any specific script, and cannot, because
 3 she mentions a character that does not exist in any of the scripts and is off in terms
 4 of describing most of the scripts that come off the suspect floppy discs with dates of
 5 creation for that time. DN 122-5 at 266-269. As noted, she was working for Oliver
 6 Stone's competing production company at the time, and a public website says she
 7 was in Vancouver and Prague a great deal during that time period. *See* Exhibit W to
 8 Fox Decl. She does not offer these facts. Instead she incorrectly depicts herself as
 9 a regular coverage writer for The Bubble Factory.

10 To authenticate a document you must have firsthand knowledge of a specific
 11 document's actual manner of creation and existence, in its entirety, and not just
 12 parrot back words written and suggested by lawyers. (All the declarations read the
 13 same.) The evidence presented in support of or in opposition to a motion for
 14 summary judgment must be based on personal knowledge, properly authenticated
 15 and admissible under the Federal Rules of Evidence. Fed. R. Civ. P. 56(e). "The
 16 requirement of authentication ... as a condition precedent to admissibility is
 17 satisfied by evidence sufficient to support a finding that the matter in question is
 18 what its proponent claims." Fed. R. Civ. P. 901(a). Evidence that is not properly
 19 authenticated will not be considered by the court when reviewing a motion for
 20 summary judgment. *Orr v. Bank of America*, 285 F.3d 764, 773 (9th Cir.2002). *See*
 21 also *Salkin v. United Servs. Auto. Ass'n*, 835 F.Supp.2d 825, 828 (C.D.Cal.2011)
 22 (Court held that the authenticating witness must have personal knowledge that the
 23 document is what it purports to be because he wrote it, signed it, used it, or saw
 24 others do so); *Townsend v. Bannister* 2011 WL 7031091 (D. Nev. Dec 6, 20011)
 25 (Court held that Defendants' failure to rely on authenticated evidence caused the
 26 Defendants to fail to meet their burden of proving that no genuine issue of material
 27 fact existed for summary judgment).

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IV. CONCLUSION

For all the reasons stated herein and in the very specific set of objections and motion to strike, these declarations should be stricken under the Federal Rules of Evidence.

LAW OFFICES OF GERARD FOX, INC.

Date: February 17, 2014

GERARD P. FOX
Attorney for Plaintiffs Gold Glove
Productions, LLC and Ryan A. Brooks

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:
Law Offices of Gerard Fox, Inc., 1880 Century Park East, Suite 600, Los Angeles, CA
90067.

On February 18, 2014, I served the following documents entitled:

**PLAINTIFFS' REPLY TO UTA DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' SUPPORTING
DECLARATIONS**

on the person(s) listed in the attached Service List. The documents were served by the following means:

8 **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for
9 collection and mailing today following ordinary business practices. I am
10 readily familiar with this agency's practice for collections and processing of
11 correspondence for mailing; such correspondence would be deposited with
12 the U.S. Postal Service on the same day in the ordinary course of business.

13 **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s),
14 which I personally deposited with the U.S. Postal Service. Each such
15 envelope was deposited with the U.S. Postal Service at Los Angeles,
16 California, with first class postage thereon fully prepaid.

17 **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility
18 regularly maintained at the U.S. Postal Service for receipt of Express Mail at
19 Los Angeles, California, with Express Mail postage paid.

20 **HAND DELIVERY:** I caused to be hand delivered each such envelope to
the office of the addressee as stated on the attached service list.

21 **FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by
22 Federal Express with delivery fees paid or provided for, which I deposited in
23 a facility regularly maintained by Federal Express or delivered to a Federal
24 Express courier, at Los Angeles, California.

25 **ELECTRONIC MAIL:** By transmitting the document by electronic mail
26 to the electronic mail address as stated on the attached service list.

27 **FAX:** By transmitting the document by facsimile transmission. The
28 transmission was reported as complete and without error.

29 **By CM/ECF Electronic Service:** I caused such document to be served via
30 the Court's (NEF) electronic filing system on all registered parties.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2014

Carrie

Cindy Hamilton

Service List

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